

**IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR
&
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY**

**Wednesday, the 17th day of November 2021 / 26th Karthika, 1943
WP(C) NO. 29247 OF 2019(S)**

PETITIONER

**KABEER C., AGED 33 YEARS,
S/O. SRAJU C., CHORAMPADATH HOUSE,
PAVUKKONAM POST, VANIYAMKULAM VIA,
PALAKKAD-679 522.**

RESPONDENTS

- 1. STATE OF KERALA,
REPRESENTED BY ITS SECRETARY,
DEPARTMENT OF SOCIAL JUSTICE,
SECRETARIAT, THIRUVANANTHAPURAM-695 001.**
- 2. DIRECTOR, DEPARTMENT OF SOCIAL JUSTICE,
THIRUVANANTHAPURAM-695 001.**
- 3. SECRETARY TO GOVERNMENT, DEPARTMENT OF LAW,
SECRETARIAT, THIRUVANANTHAPURAM-695 001.**

Writ Petition (civil) praying inter alia that in the circumstances stated in the affidavit filed along with the WP(C) the High Court be pleased to call for records from the respondents the action taken subsequent to the Transgender Policy, 2015 for implementation of the policy objectives.

This petition again coming on for orders upon perusing the petition and the affidavit filed in support of WP(C) and this court's order dated 13/01/2020 and upon hearing the arguments of M/S KALEESWARAM RAJ, THULASI K.RAJ, MAITREYI S.HEGDE & VARUN C.VIJAY, Advocates for the petitioner, STATE ATTORNEY FOR R1 TO R3 and of SRI.SURIN GEORGE IPE, SENIOR GOVERNMENT PLEADER, the court passed the following:

P.T.O.

S. MANIKUMAR, CJ
&
SHAJI P. CHALY, J

W.P(C). No. 13930 of 2015 (S)
and
W.P(C). No. 29247 of 2019 (S)

Dated this the 17th day of November, 2021

ORDER

S. Manikumar, CJ.

On 13.1.2020, considering the material on record and statutory provisions of Section 2(a) of the Transgender Persons (Protection of Rights) Act, 2019, we passed the following order:

"Writ petition No.13930 of 2015 has been filed with the following prayers:

- "i) direct the first respondent to come forward with positive steps to ameliorate the agony, fate and plight of transgenders (third gender) in Kerala in accordance with Ext.P2 judgment of the Hon'ble Supreme Court of India;
- ii) direct the 2nd respondent to take urgent steps to take census and collect details of transgenders (third genders) in Kerala;
- iii) direct the 3rd respondent to grant adequate financial aid to State of Kerala to take steps to ameliorate the agony, fate and plight of transgenders in Kerala;
- iv) direct the first respondent to sanction as allowance an amount of Rs.10,000/- each per month to every transgenders (third genders) in Kerala;
- v) direct the 2nd respondent to provide free education, food, shelter, clothing and monetary allowance to the needy

transgenders (third genders) in Kerala;

vi) direct the 1st respondent to take further steps to reserve seats in education institutions and public employments to transgenders as directed by the Hon'ble Supreme Court of India in Ext.P2 judgment."

2. Writ petition No.29247 of 2019 has been filed with the following prayers:

"i) to declare that the petitioner and the transgenders in general are entitled to reservation under the state for employment under the state as well as to admission to government educational institutions based on articles 14, 19 and 21 of the Constitution of India;

ii) to issue a writ of mandamus directing the respondents to frame and implement a reservation policy in favour of transgenders in both public employment and in government educational institutions in the state of Kerala."

3. Inviting attention of this court to the Transgender Persons (Protection of Rights) Act, 2019 enacted by the Parliament, Mr.K.V.Sohan, learned State Attorney submitted that steps are being taken to prepare a database of transgenders in the State. It is also submitted that after online registration, identity cards have been issued to transgenders. Though sufficient steps have been taken to create public awareness, only 600 transgenders are willing to take identity cards.

4. Referring to the prayers sought for in W.P. (C)13930/2015, Mr.Surin George Ipe, learned Senior Government Pleader submitted that a policy decision has been taken and supporting documents have been filed in W.P.(C)29247 of 2019. He further submitted that prayer sought for has been addressed. Therefore, sought for closure of the said writ petition.

5. Sri.Harish Vasudevan, learned Amicus Curiae has

submitted that Transgenders Welfare Board has been constituted. He needs time to get details from the members of the Board as to the modalities of implementation of welfare measures to transgenders.

6. Referring to the judgment of the Supreme Court in *National Legal Services Authority v. Union of India and others* reported in (2014) 5 SCC 438, learned counsel for the petitioner in W.P.(C)No.29247 of 2019 submitted that the Honourable Supreme Court has directed that reservation should also be given to transgenders. Learned State Attorney submitted that reservation is being granted based on population of the particular community and for this purpose, census is required to be taken.

7. As per Section 2(a) of the Transgender Persons (Protection of Rights) Act, 2019, "appropriate Government" is defined as hereunder:

(a) "appropriate Government" means, -

(i) in relation to the Central Government or any establishment, wholly or substantially financed by that Government, the Central Government;

(ii) in relation to a State Government or any establishment, wholly or substantially financed by that Government, or any local authority, the State Government;

8. Both the State Government as well as the Central Government are directed to submit the time line for formulation of the rules for the protection of rights of transgender persons. It is also directed to produce the details of the welfare measures proposed and the proceedings issued, if any, by various Departments in the matter of education, health, employment and in

any other area for the welfare of the transgenders.

9. State Government is directed to issue public notice informing the transgenders about the process of online registration so as to enable them to obtain the identity card. It is also directed to take steps to conduct awareness camps about the welfare measures available to the transgenders. Kerala State Legal Services Authority is also directed to take steps to create public awareness regarding the above online registration.

Post after two weeks."

2. Mr. Harish Vasudevan, learned Amicus Curiae has filed a report explaining the need to implement the provisions of Transgender Persons (Protection of Rights) Act, 2019, in letter and spirit.

3. Report of the learned Amicus Curiae dated 5.12.2021 is reproduced:

"REPORT FILED BY THE AMICUS CURIAE APPOINTED BY THIS
HON'BLE COURT VIDE ORDER DATED 19.09.2019

1. The above-mentioned public interest litigation is filed by Late Adv Basil Attippety with prayers inter alia seeking directions to the 1 st respondent to come forward with positive steps to ameliorate the agony, fate and plight of transgenders (third gender) in Kerala in accordance with Exhibit P2 judgment of the Hon'ble Supreme Court of India. In this background, the following report is submitted.

Introduction

2. In India, the transgender community is incredibly diverse. In the Indian subcontinent, the transgender community prefers to call themselves Kinnar or Kinner, referring to the mythological beings that excel at music and dance. Many transgenders live in well-defined and organised transgender communities. These communities have existed over generations of those who are in

abject poverty, rejected by, or flee, their family of origin. Many of them work as sex workers for survival.

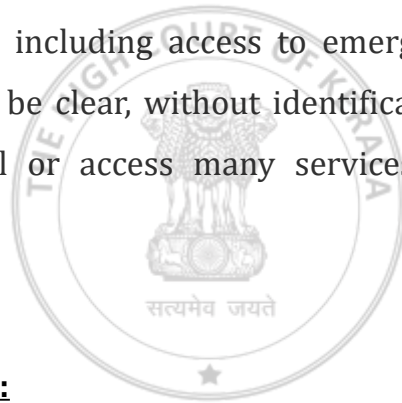
What challenges do transgender people face?

3. While the visibility of transgender people is increasing in popular culture and daily life, they still face severe discrimination, stigma and systemic inequality. Some of the specific issues facing the transgender community are:

- **Lack of legal protection**– After the dictum laid down by the Hon'ble Apex Court in National Legal Services Authority Vs Union of India & Ors reported in AIR 2014 SC 1863 steps have been taken by various State Governments to include transgender people under existing non-discrimination protections, however, there is still no comprehensive non-discrimination law that includes gender identity.
- **Poverty**– In too many cases, this lack of legal protection translates into unemployment for transgender people. As anyone who has experienced poverty or unemployment understands, being unable to afford basic living necessities can result in homelessness or lead people to engage in underground economies like drug sales or survival sex work, which can put people at increased risk for violence and arrest.
- **Harassment and stigma**– The transgender community still faces considerable stigma based on over a century of being characterized as mentally ill, socially deviant and sexually predatory. While these flawed views have faded in recent years for lesbians and gay men, transgender people are still often met with ridicule from a society that does not understand us. This stigma plays out in a variety of contexts –

leaving transgender community vulnerable to lawmakers who attempt to leverage anti-transgender stigma to score cheap political points; to family, friends or co-workers who reject transgender people upon learning about our transgender identities; and to people who harass, bully and commit serious violence against transgender people.

- **Barriers to healthcare**–Beyond facing barriers to obtaining medically-necessary health services and encountering medical professionals who lacked transgender health care competency.
- **Identity Documents** – The widespread lack of accurate identity documents among transgender people can have an impact on every area of their lives, including access to emergency housing or other public services. To be clear, without identification, one cannot travel, register for school or access many services that are essential to function in society.



Judicial Interventions:

4. The Honorable Supreme Court in the matter of **National Legal Service Authority V. Union of India & Others** reported in **AIR 2014 SC 1863** laid down a landmark decision and declared and laid down the following dictums:

- *Hijara's, Eunuch apart from binary gender, to be treated as "third gender" for the Part III of the Constitution and other laws. Direction given to the Centre and State Governments to protect rights of people coming under third gender.*
- *Article 14 does not restrict the word person only to male or female. Transgender persons also fall within the expression of 'person' and*

hence, entitled to legal protection and equal civil and Citizenship rights as enjoyed by any other citizen of the country.

- *International conventions not inconsistent with fundamental rights and in harmony with its spirit must be read into those provisions, e.g., Art.14, Art.15, Art.19 and Art.21 to enlarge the meaning and content thereof and to promote the object of constitutional guarantee -- Principles and International Conventions on transgender, which are not inconsistent with various fundamental rights guaranteed under Constitution, must be recognised and followed*
- *Parliament has the power to make any law for implementing any treaty, agreement or convention -- Hence, legislation is required for implementing international conventions*
- *There is no impediment in giving due recognition to gender identity based on re assign sex after undergoing surgery -- A person has a constitutional right to get recognition as male or female after SRS (Sex Re Assignment Surgery)*
- *Discrimination on the ground of 'sex' includes discrimination on the ground of gender identity -- Expression 'sex' used in Art.15 and Art.16 is not limited to biological sex of male or female, but also includes people who is neither male nor female.*
- *Restriction cannot be put on one's personal appearance or choice of dressing except as per restrictions contained in Art.19(2) of the Constitution -- Gender identity will have to be protected under Art.19(1)(a).*
- *Self determination of gender is an integral part of personal autonomy and self expression and falls under the category of personal liberty*

guaranteed under Art.21 -- Hence, Hijras / Eunuchs have to be considered as third gender under the Constitution and laws.

- *Expressions 'person', 'citizen' and 'sex' used in fundamental rights are held to be "gender neutral" indicating human beings, which include transgenders as well -- No citizen (including transgenders) can be discriminated on the ground of gender identity.*

5. The Division Bench of Honourable Kerala High Court in **2018 (3) KHC 302** ; Tessy James V. Director General of Police and others laid down that *"Transgenders fall within the expression 'Person' and are entitled to all rights recognized by law. Right to wander with like people, cannot be compelled to be in parental home."*

6. The Division Bench of Honorable Hon'ble Allahabad High Court (D.Y Chandrachud, C.J, Narayan Shukla J) **2015 KHC 2765**; Ashish Kumar Mishra V. Bharath Sarkar laid down held about Transgenders right to seek food security and to avail status of head of a household and laid down that under National Food Security Act, 2013. . **The Hon'ble Court was pleased to hold that:**

- *"The Honorable Court laid down that Food security means no less to a transgender than to other segments of society. Impoverishment and marginalization have been endemic to the transgender population. Preventing discrimination in all walks of life is one facet of the right of transgenders to live in dignity, with the confidence that they can lead their lives on their own terms in realisation of gender identity. But the law needs to travel beyond non discrimination, by recognising an affirmative obligation of the State to provide access to social security. Food security lies at the foundation of it. Transgenders must have both. The form which has*

been prescribed by the State Government for submitting applications under the Act contains an enumeration of several items on which a disclosure of information has been sought from the applicant. One of them requires a disclosure of the name of the woman who is the head of the household. That however cannot be read as an exclusion of a transgender to apply for the issuance of a ration card and must be read in the context of serial number twelve of the application form. Serial number twelve refers to the gender of the applicant. In parathesis, the reference to gender is construed to mean 'female / male / other'. The expression 'other' would necessarily include a transgender. S.13 of the Act, may not have specifically incorporated a provision that would be inclusive of a head of a household as a transgender to apply for the issuance of a ration card. The object and purpose of S.13 of the Act was to bring about a sense of empowerment for women. The purpose of enacting S.13 of the Act was to recognize the status of a woman in every household and it was in that context that the statute has enacted that the head of the household would be deemed to be eldest woman member who is above the age of eighteen. The recognition of the eldest woman as the head of the household is in contradistinction to a male member since as we have already noted above, sub-section (2) of S.13 of the Act enables a male member of the household to be recognized as the head of the household only in the absence of a woman or if the sole woman is below the age of eighteen, until she attains the age of majority. The object and purpose of S.13 of the Act in other words was not to exclude transgenders though in view of the judgment of the Supreme Court in National Legal Services Authority (supra) Parliament may, if we

may respectfully so say, consider the appropriateness of a suitable provision to meet the situation. This is entirely within the purview of the legislating body and a matter which lies in the province of the enacting authority. The salutary public purpose, underlying the enactment of S.13 of the Act can be furthered by incorporating a situation where a transgender can be recognized as a head of an eligible household.”

STATE OF KERALA GOVERNMENT’S INITIATIVE

Transgender Policy 2015

7. In the year 2015, the Government of Kerala, Social Justice Department has enacted a Transgender Policy. The said policy was enacted for the proper implementation of the directions of the Honorable Supreme Court in the National Legal Service Authorities case. The transgender people face injustice at every turn: in their families and homes, school systems that promise to shelter and educate, in harsh and exclusionary workplaces, at the markets and shops, the hotel front desk, emergency rooms, and at the hands of landlords, police officers, health care workers and other service providers.¹ The state government has formulated the transgender policy after conducting detailed survey.²
8. The Government of Kerala has formulated the Transgender Policy, 2015 to enforce the constitutional rights of the transgender, taking into account the Supreme Court judgment in National Legal Service Authorities case (2014) and findings of the Kerala State transgender

1 Transgender Policy, 2015

2 Transgender Survey 2014-2015.

survey. The policy covers all the categories of the transgenders, including but not limited to Female to Male transgenders and Inter sex people. This policy emphasizes the rights of the transgenders to self identity as man, woman or transgenders as stated in the judgment.

9. GOALS AND OBJECTIVES OF THE TRANSGENDER POLICY

The transgender policy supports the attainment of :-

- *A just society where men, women and transgenders have equal rights to access development opportunities, resources, and benefits;*
- *The right to live with dignity and enjoy a life free from all forms of violation;*
- *The right to freedom of expression in all matters that affects them; and*
- *Right to equal voice and participation in key development decisions that shape their lives, communities, and the state.*

10. GOVERNMENT ORDERS PASSED FOR THE IMPLEMENTATION OF THE TRANSGENDER POLICY

- G.O(Rt) No 493/2015 (SJD) dated 03.08.2015

This Government Order aims for providing financial assistance to those transgender students who have undergone the Sex-Re Assignment Surgery. The government has consolidated Rs.62,50,000/- for the same.

- G.O (Rt) 396/2017 (SJD) dated 21.06.2017

This Government Order aims for providing driving training by selecting five transgenders in each district for the better self-employment opportunities. The government has consolidated Rs.5,95,000/- for the same.

- **G.O (Rt) 596/2017 (SJD) dated 14.09.2017**

This Government Order aims for providing training for the employment skill development. The government has consolidated Rs. 70 lakhs for the sustenance of the transgenders who are facing great issues in the daily life.

- **G.O(Rt) No 25/2018 (S.J.D) dated 21.01.2018**

This Government Order aims for including representatives of transgenders community in the District Transgender Justice Board.

- **G.O(Rt) No 86/2018(S.J.D) dated 20.02.2018**

This Government Order aims for the formation of Transgender Cell under the Directorate of Social Justice and the government has consolidated Rs. 17,71,800 for the same. **G.O(Rt) No 145/2018 (S.J.D) dated 20.03.2018**

This Government Order aims for providing educational programme in tune with Samanwaya Continuing education programme of the Kerala State Literacy Mission. The government has consolidated Rs. 35,00,000/- for providing scholarship to transgenders in 4th std, 7th Std, 10th std, Higher Secondary, providing shelter homes during the educational period, training for employment.

- **G.O (Rt) 605/2018(SJD) dated 25.10.2018**

This Government Order aims for providing financial assistance for the legally married transgenders. The government has consolidated Rs 30,000 each for ten transgenders.

- **G.O(Rt) 652/2018(SJD) dated 14.11.2018**

This Government Order aims for providing financial aid and further treatment for the transgenders who have done Sex Re-Assignment surgery. The government has consolidated Rs.18,00,000/- for the same for a period of one year.

- **G.O(Rt) 658/2018(SJD) dated 15.11.2018**

This Government Order aims for providing financial assistance for self-employment of the transgenders and consolidated Rs. 3,00,000/- for the same.

- **G.O(Rt) 388/2019(SJD) dated 28.06.2019**

This Government Order aims for using the term “Transgender” in the registry for addressing the transgender community.

Recent Developments

ENACTMENT OF THE TRANSGENDER PERSON'S (PROTECTION OF RIGHTS) ACT 2019

11.On 05.12.2019, the President of India gave assent and now the Transgender Person's (Protection of Rights) Act, 2019 has come into

force. The Act aims to provide for protection of rights of transgender persons and their welfare and for matters connected therewith and incidental thereto.

12. As per Section 3 of the Transgender Person's (Protection of Rights) Act, 2019:

No person or establishment shall discriminate against a transgender person on any of the following grounds, namely :-

(a) the denial, or discontinuation of, or unfair treatment in, educational establishments and services thereof;

(b) the unfair treatment in, or in relation to, employment or occupation;

(c) the denial of, or termination from, employment or occupation;

(d) the denial or discontinuation of, or unfair treatment in, healthcare services;

(e) the denial or discontinuation of, or unfair treatment with regard to, access to, or provision or enjoyment or use of any goods, accommodation, service, facility, benefit, privilege or opportunity dedicated to the use of the general public or customarily available to the public;

(f) the denial or discontinuation of, or unfair treatment with regard to the right of movement;

(g) the denial or discontinuation of, or unfair treatment with regard to the right to reside, purchase, rent, or otherwise occupy any property;

(h) the denial or discontinuation of, or unfair treatment in, the opportunity to

*stand for or hold public or private office; and
(i) the denial of access to, removal from, or unfair treatment in,
Government or private establishment in whose care or custody a
transgender person may be.*³

RECOGNITION OF IDENTITY OF TRANSGENDER PERSONS

13.The Act aims to a mechanism for social, economic and educational empowerment of transgender. Chapter III of the Act lays down about Recognition of identity of transgender persons. The Transgender Persons shall have the right to be recognized as such, in accordance with the provisions of the Act and shall have a right to self-perceived gender identity.⁴

14.The act lays down that transgender person may make an application to the District Magistrate for issuing a certificate of identity as a transgender person, in such form and manner, and accompanied with such documents, as may be prescribed. In case of a minor child, such application shall be made by a parent or guardian of such child and after that the District Magistrate shall issue certificate of identity to the applicant.⁵ Then the gender of transgender person shall be recorded in all official documents and the certificate of identity issued by the District Magistrate shall confer rights and be a proof of recognition of his identity as a transgender person.

15.As per Section 7 of the Transgender Person's (Protection of Rights) Act, 2019, If a transgender person undergoes surgery to change gender either as a male or female, such person may make an application, along

3 Section 3; Transgender Person's (Protection of Rights) Act, 2019

4 Section 4; Transgender Person's (Protection of Rights) Act, 2019

5 Section 5; Transgender Person's (Protection of Rights) Act, 2019

with a certificate issued to that effect by the Medical Superintendent or Chief Medical Officer of the medical institution in which that person has undergone surgery, to the District Magistrate for revised certificate, in such form and manner as may be prescribed. Then the District Magistrate shall on receipt of an application along with the certificate issued by the Medical Superintendent or Chief Medical Officer, and on being satisfied with the correctness of such certificate, issue a certificate indicating change in gender in such form and manner and within such time, as may be prescribed.⁶ The change in gender and the issue of revised certificate shall not affect the rights and entitlements of such person.

WELFARE MEASURES TO BE ADOPTED BY THE GOVERNMENT

16. The Act lays down that the appropriate governments shall take steps to secure full and effective participation of transgender persons and their inclusion in society, protect the rights and interests of transgender persons, and facilitate their access to welfare schemes framed by that Government. The government is to take steps for the rescue, protection and rehabilitation of transgender persons to address the needs of such persons. The appropriate Government shall take appropriate measures to promote and protect the right of transgender persons to participate in cultural and recreational activities.

OBLIGATION OF ESTABLISHMENTS AND OTHER PERSONS

17. Section 9 of the Transgender Person's (Protection of Rights) Act, 2019 lays down that no establishment shall discriminate against any transgender person in any matter relating to employment including, but

⁶ Section 7(2) Transgender Person's (Protection of Rights) Act, 2019

not limited to, recruitment, promotion and other related issues. Every establishment shall designate a person to be a complaint officer to deal with the complaints relating to violation of the provisions of the Transgender Person's (Protection of Rights) Act, 2019. Moreover the act lays down that no child shall be separated from parents or immediate family on the ground of being a transgender, except on an order of a competent court, in the interest of such child. Every transgender person shall have a right to reside in the household where parent or immediate family members reside; a right not to be excluded from such household or any part thereof; and a right to enjoy and use the facilities of such household in a non-discriminatory manner.⁷ Where any parent or a member of his immediate family is unable to take care of a transgender, the competent court shall by an order direct such person to be placed in rehabilitation centre.⁸

EDUCATION, SOCIAL SECURITY AND HEALTH OF TRANSGENDER PERSONS

18.The act provides for the education, social security and health of the transgender persons. Every educational institution funded or recognised by the appropriate government shall provide inclusive education and opportunities for sports, recreation and leisure activities to transgender persons without discrimination on an equal basis with others. It is the obligation of the educational institutions to provide inclusive education to transgender persons.

19.As per Section 15 of the Act, The appropriate Government shall take the

⁷ Section 12; Transgender Person's (Protection of Rights) Act, 2019

⁸ supra

following measures in relation to transgender persons, namely :-

- (a) to set up separate human immunodeficiency virus Sero-surveillance Centres to conduct sero-surveillance for such persons in accordance with the guidelines issued by the National AIDS Control Organisation in this behalf;*
- (b) to provide for medical care facility including sex reassignment surgery and hormonal therapy;*
- (c) before and after sex reassignment surgery and hormonal therapy counselling;*
- (d) bring out a Health Manual related to sex reassignment surgery in accordance with the World Profession Association for Transgender Health guidelines;*
- (e) review of medical curriculum and research for doctors to address their specific health issues;*
- (f) to facilitate access to transgender persons in hospitals and other healthcare institutions and centres;*
- (g) provision for coverage of medical expenses by a comprehensive insurance scheme for Sex Reassignment Surgery, hormonal therapy, laser therapy or any other health issues of transgender persons.*

To the best of my knowledge, the objectives mentioned in Section 15 of the Act are yet to be implemented by the State of Kerala.

NATIONAL COUNCIL FOR TRANSGENDER PERSONS

20. Chapter VII of the act deals with National Council for Transgender Persons. The Central Government shall by notification constitute a National Council for Transgender Persons to exercise the powers conferred on, and to perform the functions assigned to it. As per **Section 16** of the Transgender Person's (Protection of Rights) Act, 2019.

The National Council shall consist of

(a) the Union Minister in-charge of the Ministry of Social Justice and Empowerment, Chairperson, ex officio;

(b) the Minister of State, in-charge of the Ministry of Social Justice and Empowerment in the Government, Vice-Chairperson, ex officio;

(c) Secretary to the Government of India in-charge of the Ministry of Social

Justice and Empowerment, Member, ex officio;

(d) one representative each from the Ministries of Health and Family Welfare, Home Affairs, Housing and Urban Affairs, Minority Affairs, Human Resources Development, Rural Development, Labour and Employment and Departments of Legal Affairs, Pensions and Pensioners Welfare and National Institute for Transforming India Aayog, not below the rank of Joint Secretaries to the Government of India, Members, ex officio;

(e) one representative each from the National Human Rights Commission and National Commission for Women, not below the rank of Joint Secretaries to the Government of India, Members, ex officio;

(f) representatives of the State Governments and Union territories by rotation, one each from the North, South, East, West and North-East regions, to be nominated by the Central Government, Members, ex officio;

(g) five representatives of transgender community, by rotation, from

the State Governments and Union territories, one each from the North, South, East, West and North-East regions, to be nominated by the Central Government, Members;

(h) five experts, to represent non-governmental organisations or associations, working for the welfare of transgender persons, to be nominated by the Central Government, Members; and

(i) Joint Secretary to the Government of India in the Ministry of Social Justice and Empowerment dealing with the welfare of the transgender persons, Member Secretary, ex officio.

FUNCTIONS OF THE NATIONAL COUNCIL FOR TRANSGENDER PERSONS

The Act enlists various functions of the National Council for Transgender Persons. They are

(a) to advise the Central Government on the formulation of policies, programmes,

legislation and projects with respect to transgender persons;

(b) to monitor and evaluate the impact of policies and programmes designed for

achieving equality and full participation of transgender persons;

(c) to review and coordinate the activities of all the departments of Government and other Governmental and non-Governmental Organizations which are dealing with matters relating to transgender persons;

(d) to redress the grievances of transgender persons; and

(e) to perform such other functions as may be prescribed by the Central Government.

OFFENCES AND PENALTIES

The act lays down various penalties for the offences against the transgender persons. Whoever,—

(a) compels or entices a transgender person to indulge in the act of forced or bonded labour other than any compulsory service for public purposes imposed by

Government;

(b) denies a transgender person the right of passage to a public place or obstructs

such person from using or having access to a public place to which other members

have access to or a right to use;

(c) forces or causes a transgender person to leave household, village or other

place of residence; and

(d) harms or injures or endangers the life, safety, health or well-being, whether mental or physical, of a transgender person or tends to do acts including causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years and with fine.⁹

GRANTS BY CENTRAL GOVERNMENT AND RULE MAKING POWER

The Central Government shall, from time to time, after due appropriation made by Parliament by law in this behalf, credit such sums to the National Council as may be necessary for carrying out the purposes of this Act. The appropriate Government may, subject to the condition of previous publication, by notification, make rules for carrying out the provisions of this Act.¹⁰

⁹ Section 18, The Transgender Person's (Protection of Rights Act) 2019

¹⁰ Section 22, The Transgender Person's (Protection of Rights Act) 2019.

Factual Scenario on discussion with transgenders

21. Upon my preliminary enquiry with members of District Transgender Justice Boards and State Board, it is found that the welfare schemes provided by the State are not adequate to meet the demands. According to the Board Members, sufficient budgetary allocation is not made to provide financial assistance to transgenders through various welfare schemes already declared. The meeting of the District Boards and State Board is also not being conducted regularly to meet the purpose of the same. It is learned that, in the year 2020, no single meeting is conducted by the State Transgender Justice Board. No proper publicity is given by the State regarding the rights of the transgenders and the process of obtaining identity cards, in compliance with the Interim Order dated 13.01.2020 of this Hon'ble Court. Basic sanitation facilities are not provided in public spaces or institutions.

Preliminary Suggestions:

22. The following suggestions are put to the consideration of this Hon'ble Court

- Proper census of transgenders has to be completed within a stipulated time frame.
- Identity Card shall be issued to all transgenders through proper online registration by giving enough public awareness for the said process.
- Proper gender awareness shall be conducted in the grass root level to avoid gender inequality from the public.
- Proper empowerment and capacity building mechanism has

to be provided in the District level for the effective upliftment of transgenders.

- The fair, effective functioning of Rehabilitation Centre at District level shall be continuously monitored by each District Collectors.
- Separate sanitation facilities shall be provided in all public institutions to meet their requirement.
- Regular meetings of District Transgender Justice Boards and State Board shall be conducted so as to meet the purpose of such boards.
- Sufficient fund allocation for the proper implementation of the provisions of Transgender Person's (Protection of Rights) Act 2019 shall be made in the budget."

4. That apart, Under Secretary, Social Justice (B) Department, Government Secretariat, Thiruvananthapuram, representing respondent No.1 has filed a counter affidavit setting out the steps taken.

5. On behalf of Secretary to Government of India, Department of Social Justice and Empowerment/3rd respondent, the learned Central Government Counsel has filed a statement, which reads thus:

2. It is respectfully submitted that Ext P2 judgment of the Apex Court of the land directs that Hijaras, Eunuchs, apart from binary gender, be treated as "third gender" for the purpose of safe guarding their rights under Part III of our constitution and the laws made by the Parliament and the State Legislature as contained in Paragraphs 135.1 to 135.9 thereto .

3. Further in the paragraphs 136 of Ext P2 the apex court directs that the Expert Committee, which has already been constituted, to make an in depth study of the problems faced by Hijaras and Eunuchs within six months. Accordingly the orders of the Honourable Supreme Court were to be implemented by the 14th October, 2014.

4. However, the 3rd respondent has filed a petition in the said Writ Petition on 8.9.2014 seeking further clarifications in Ext P2 judgment with regard to definition of transgender and their inclusion in OBC category. This matter is presently subjudice.

5. In this regard it is also informed that an Expert Committee was constituted under the chairmanship of Additional Secretary (SJE) to make an in-depth study of the problems being faced by the Transgender Community. The Committee submitted its report on 27th January 2014.

6 The Government has accepted the definition given by Expert Committee that "the transgender persons are those persons whose own sense of gender does not match with the gender assigned to to them at birth. They will include trans-women trans-men and (whether or not they have undergone sex reassignment Surgery or hormonal treatment or laser therapy, etc.), gender queers and a number of socio cultural identities, such as kinnars, Hijaras, aravanis, jogtas etc." Accordingly in view of the 3 respondent. Lesbian, Gay and Bisexual persons may not be included in the included in the category of transgender persons.

7. The key recommendations of the report of the Expert Committee are as follows:

i. Transgender should be declared as the third gender, and a transgender person should have the option to choose either

'man', 'woman' or 'transgender' as well have the right to choose any of the options independent of surgery/ hormones. Only the nomenclature "transgender" should be used and nomenclatures like 'other' or 'others' should not be used.

ii. An Umbrella Scheme for transgender persons may be formulated for empowerment of this community.

iii. To cope up with trauma and violence crisis counselling services could be set on the model of Rape and Crisis Intervention Centres.

iv. Criminal and disciplinary action against delinquent police officials in cases of violation of human rights of transgender persons

v. Government should provide scholarships/entitlements, fee waiver, free textbooks, free hostel accommodation and other facilities at subsidized rates for students belonging to this group.

vi. Generate more data/information to identify and understand the problems related to various aspects to their life and help frame policies through research and academic program.

vii. A National Council for Transgender persons may be considered on similar lines as that of the National Councils for Senior Citizens.

vii. To carry out survey for ascertaining their population in the country.

8. The Central Ministries concerned and the State/Union Territory the Governments are being consulted for their views on the recommendations made by the Expert Committee. An Inter-Ministerial Committee has also been formulated to co-ordinate

between the Central Ministries about the progress of activities pertaining to transgender persons. As of 26.05.2015, four Inter Ministerial Committee meetings have been held in the matter.

9. The third respondent is in the process of formulation of an Umbrella Scheme for welfare of the transgender persons. The Scheme would be comprehensive and focus on socio-economic and educational empowerment of transgender persons. The Scheme would be launched after clarification is received from the Supreme Court in the application filed by this ministry on 8.9.2014"

6. Added further, the learned Amicus Curiae submitted that though the Government, in their counter affidavit has stated that adequate steps have been taken for implementation of the Transgender Persons (Protection of Rights) Act, 2019, according to him, the same are only in paper and that provisions of the Act, as well as the judgment of the Supreme Court in **National Legal Services Authority v. Union of India and others** reported in [(2014) 5 SCC 438] have not been implemented in letter and spirit. It is the further contention of learned Amicus Curiae that though State Board and District Boards have been constituted, there is no meeting of the said Boards.

7. Mr. K.R. Ranjith, learned Government Pleader appearing for respondents 1 and 2 submitted that the District Collectors have been empowered to register transgenders by online process.

8. As the matter was listed way back in January, 2020, he requested time to get suitable instructions from respondents 1 and 2 as regards online registration and also the steps taken to conduct awareness camps for the welfare measures available to transgenders.

9. In the order dated 13.1.2020, we have already directed the Legal Services Authority to take steps to create public awareness regarding online registration and in order to have effective adjudication of the issues. Therefore, we deem it fit to *suo motu* implead the Member Secretary, Kerala State Legal Services Authority, Niyamasahaya Bhavan, High Court Complex, Ernakulam, as additional respondent No.4 in W.P(C).No.13930 of 2015. Registry is directed to make necessary amendments wherever required. Registry is also directed to serve the entire papers on the Member Secretary, Kerala State Legal Services Authority.

10. Member Secretary, Kerala State Legal Services Authority is directed to submit details of the steps taken for the welfare of transgenders, as well as implementation of the decision of Hon'ble Supreme Court in ***National Legal Services Authority v. Union of India and others (supra)***.

11. Learned Senior Government Pleader is directed to file a detailed consolidated statement on all issues raised, as well as the

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stage of online registration.

Post the matter on 29.11.2021.

Sd/-
S. Manikumar,
Chief Justice

Sd/-
Shaji P. Chaly,
Judge

sou.

